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CRIMINAL LAW CASE NOTES AND COMMENTS

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THE JUVENILE COURT—BENEVOLENCE IN THE STAR CHAMBER

MATTHEW J. BEEMSTERBOER

"[F]airness and justice certainly recognize that child has the right not to be a ward of the State, not to be committed to a reformatory, not to be deprived of his liberty, if he is innocent. The procedure for ascertaining the guilt or innocence of a minor may be . . . [called] a civil inquiry . . . but in substance and form it is a trial—a momentous trial . . . because the defendant's whole mature life still lies before him. And no matter how trained and experienced a Juvenile Court judge may be, he cannot by any magical fishing rod draw forth the truth out of a confused sea of speculation, rumor, suspicion and hearsay. He must follow certain procedures which the wisdom of centuries have established."

Dissenting opinion of Mr. Justice Musmanno, In re Holmes, 379 Pa. 599, 613, 109 A.2d 523, 529 (1954).

Could anyone quarrel with this statement? The majority of the Justices of the Pennsylvania Supreme Court did, despite the fact that the federal constitution and the constitutions of the several states guarantee that liberty shall not be taken from anyone without due process of law. As with all generalities, however, this constitutional guarantee is not universal in its application. It applies to traitors, perverts, murderers, and petty thieves, but not to children appearing before the juvenile court. Consider, for instance, the following case illustrations.

Edward, aged 43, was accused of willfully and maliciously breaking the window of a dwelling house. There was some evidence that this incident was part of a conspiracy to intimidate the owner of the residence, who, up to that time, had refused to permit the installation of a "juke box" in his place of business. The conspiracy could not be established, but the rock-throwing incident was witnessed by several neighbors. Edward was arrested upon a warrant, bound over to the grand jury by a magistrate, indicted, and arraigned. He entered a plea of not guilty. Represented by counsel, he was tried by a jury of his peers, convicted upon the testimony of eye witnesses and sentenced to jail for three months (the maximum allowable under law being six months). During the entire proceeding, including his subsequent unsuccessful attempt to obtain a reversal upon appeal, Edward was at liberty on bail.

On the other hand, consider the case of Martin, aged 13, against whom juvenile proceedings were

instituted on the petition of an eighth grade school teacher. The petition alleged that Martin was "delinquent and in need of care, guidance and control." No details of the alleged delinquency were given. The juvenile court ordered Martin placed in a county home pending a hearing. No warrant was issued for his arrest, but notice was given to his parents, stating the time and place of the hearing and compelling their attendance. The hearing took place partly in the courtroom, but mainly in the judge's chambers out of the presence of Martin and his parents. No counsel was present nor was there a trial by jury. Bail was not available. The school teacher, though unsworn, reported to the judge in his chambers and out of the presence of Martin and his parents that a female classmate of Martin's told her that Martin broke her living room window on the previous Halloween. The teacher also stated that she had heard that Martin had participated in other pranks that evening. Upon this *ex parte* report, consisting essentially of hearsay, Martin was committed to a state reformatory until he was rehabilitated but in no case to extend past his twenty-first birthday, a period of almost eight years.

The above cases, though hypothetical, are based upon the law of a particular jurisdiction.[1] Edward, the adult, was tried for the offense which he was alleged to have committed. He received the protection of the federal and state constitutions and was accorded all the requisites of due process applicable to criminal proceedings. However, Martin, the juvenile, was not *tried* for his misdeeds; instead he was protected from himself through the benevolent exercise of the state's power as *parens patriae*. True, Martin was not placed in contact with adult offenders, nor were the proceedings publicized. True, the evidence from these proceedings could not be used in any subsequent proceedings nor were any civil disabilities acquired therefrom. It is also true that Martin was specifically guaranteed the right to appeal by statute. But, on the basis of precedent in this jurisdiction, the juvenile court could and probably would be upheld upon appeal.

The basic discrepancy between these two proceedings suggests itself. Even though both persons committed identical offenses, Edward was protected by every device known to the law to assure him a fair trial. He was found *guilty* and *punished* with a sentence of three months in prison. Martin, however was *not tried*; he was the recipient of the benevolent guardianship of the state and as a result could be detained for as long as eight years in a training school.

These hypothetical cases are admittedly extreme, but to some extent they could occur in any jurisdiction. The problem in this area, stripped of all its technical niceties, is this: "Are children entitled to the protection of the Constitution of the United States . . . (and of the appropriate state constitution)?"[2] One's immediate response to such a question would be: "Of course." The courts have, however, employed a legal fiction which avoids this seemingly obvious answer. They insist that proceedings before the juvenile court are civil, not criminal. Thus the specific constitutional guarantees and the requirements of procedural due process applicable to criminal proceedings are not applied in juvenile cases. When faced with the rather embarrassing reminder that certain guarantees, for example, the privilege against self-incrimination, are applicable in civil actions and before administrative agencies, the courts then refer to juvenile cases as neither civil nor criminal in nature, but as special or statutory proceedings. The state is said to be exercising its power as *parens patriae* to rehabilitate rather than to punish the juvenile, but industrial homes, reformatories and training schools may be somewhat less than benevolent. Indeed, their similarity to prisons is much more striking than their similarity to school playgrounds.

What factors have produced this trick of nomenclature in an attempt to justify the denial of constitutional safeguards to juveniles? Two fundamental misconceptions may be noted:

1. A confusion between an *adjudication* of delin-

[1] The state is Pennsylvania. There, a petition to the juvenile court need allege no more than the condition of delinquency and a need for supervision. PENN. ANN. STAT., ch. 11, §247 (1943). Custody pending hearing is specifically provided along with notice to the parents, compelling their attendance. PENN. ANN. STAT., ch. 11, §248 (1943). Hearsay evidence was held admissable, if not objected to, and an *ex parte* hearing was sustained in *In re* Holmes, 329 Pa. 599, 109 A.2d 523 (1954). See also Commonwealth v. Firsher, 213 Pa. 48, 62 Atl.198 (1905). Trial by jury is dispensed with. PENN. ANN. STAT., ch. 11, §247 (1943). Segregated custody for youthful offenders is provided. PENN. ANN. STAT, ch. 11, §249 (1943). A child adjudged to be delinquent does not acquire civil disabilities. PENN. ANN. STAT., ch. 11, §261 (1943). An appeal from the judgement of the juvenile court is a matter of right. PENN. ANN. STAT., ch. 11, §257 (1943). Willful and malicious destruction of property is a misdemeanor and the maximum sentence is six months. PENN. ANN. STAT., ch. 18, §4916 (1943).

[2] *In re* Holmes, 379 Pa. 599, 616, 109 A.2d 523, 531 (1954).

quency and the *treatment* subsequent to such an adjudication. Juvenile proceedings are essentially criminal when their subject matter is alleged delinquency and as such involve two steps:

a. an adjudication that the juvenile has done the acts cited (essentially a trial); and
b. treatment or rehabilitation (the substitute for sentencing and imprisonment accorded to offenders under the criminal law).

2. A confusion between an adjudication of *delinquency* (essentially a criminal determination) and an adjudication of *dependency* or *neglect* (essentially a civil determination).

A brief look at the origin and evolution of the juvenile courts will indicate what the legislatures were attempting to accomplish when they established these tribunals. Later, what have been cited as misconceptions will be discussed in view of what history and the case law disclose.

Origin and Evolution of the Juvenile Court

Statutes establishing juvenile courts are a significant departure from the common law treatment of criminal offenses committed by minors. At common law a child was incapable of committing a crime until he attained the age of criminal responsibility which was fixed at seven. Between the ages of seven and fourteen, a rebuttable presumption existed that a child was incapable of committing a crime. After a child reached the age of fourteen he was treated as an adult and the same sanctions were applied to him.[3] The purpose of the exercise of criminal jurisdiction was closer to vengeance than to deterrence or reformation.[4] Many thought that the application of criminal penalties to juveniles was overly harsh, and steps were gradually taken to modify the application of the criminal law to youthful offenders.

The origin of the juvenile court is frequently traced to the English courts of chancery, particularly to their exercise of the power of *parens patriae*.[5] The courts of chancery were more flexible than the common law courts, and perhaps this feature accounts for the origin of the informal and supposedly civil nature of juvenile proceedings. Chancery did not permit trial by jury, a feature copied by most juvenile courts.

In America, the first development in juvenile law occurred in the middle of the nineteenth century with the establishment of separate penal institutions for youthful offenders.[6] In 1841, Massachusetts established a probation system for juvenile offenders, emphasizing rehabilitation rather than punishment.[7] Subsequently, Massachusetts required separate hearings and transportation for juveniles in order that they not be commingled with adult offenders.[8] In 1892, New York provided separate trials, dockets, and records for children under the age of sixteen.[9] Illinois established the first juvenile court in the nation in 1899. As early as 1861, however, the mayor of Chicago had the power to appoint a commissioner to hear cases involving boys under the age of seventeen and to place them on probation or in a reform school.[10]

Juvenile courts were a reaction against the extreme hardship worked by the enforcement of criminal sanctions against youthful offenders who were usually not beyond reformation. Since through juvenile courts infants were no longer subjected to adult penalties, different procedures were established to determine whether the juvenile needed the supervision of the state. The juvenile courts proceeded to dispense almost completely with what in criminal cases had been thought to be required by specific constitutional guarantees and the requirements of procedural due process. This dispensation with the orthodox requirements of due process was justified by referring to the civil nature of the juvenile court's proceedings.[11] The state, exercising its inherent power as *parens*

[3] PERKINS, CRIMINAL LAW 729 (1957).

[4] State *ex rel.* City of Minor v. Gronna, 79 N.D. 673, 702, 59 N.W.2d 514, 534, (1953). This case distinguishes the common law treatment of offenders from the treatment accorded minors under the statute. "It was not the aim of the act to provide for the punishment of such minors but instead to treat such minors not as criminals but as wards of the state."

[5] *In re* Turner, 94 Kan. 115, 145 Pac. 871 (1915). See also TAPPAN, JUVENILE OFFENDERS (1949).

[6] TAPPAN, JUVENILE OFFENDERS 555 (1949).

[7] Massachusetts Acts and Resolves, ch. 453 (1869).

[8] An Act to Regulate the Treatment and Control of Dependent, Neglected and Delinquent Children, noted in TAPPAN, JUVENILE OFFENDERS 555 (1949).

[9] TAPPAN, JUVENILE OFFENDERS 555 (1949).

[10] Illinois, Private Laws (1867) at 31.

[11] Wissenberg v. Bradley, 209 Iowa 813, 816, 229 N.W. 205, 207 (1929). "The appellant in the instant case is not being tried in this proceeding for any crime. The action is, in a sense, a special proceeding provided by statute, wherein the state, by virtue of its authority as *parens patriae*, takes jurisdiction of the incorrigible child and commits it, not to jail for punishment, but to a reformatory for its care, education, and training. That such a statute and such a proceeding, without a trial by jury, does not violate either the federal or the state constitutional provisions, has been repeatedly held." *See also In re* Knowack, 158 N.Y. 482, 53 N.E. 676 (1899); *In re* Turner, *supra* note 5.

patriae, is attempting to rehabilitate the offender, substituting itself for the natural parents or legal guardians who have not properly looked after the juvenile.[12] Overlooked, perhaps, is the fact that the juvenile will be deprived of his liberty despite the civil nature of the proceedings. Does mere nomenclature change the essential nature of the proceedings?

Proceedings in the Juvenile Court: Safeguards Held To Be Inapplicable

The statutes establishing the jurisdiction of juvenile courts are characterized as parental and benevolent in nature.[13] Essential to the jurisdiction of a juvenile court is a determination that the child is either *dependent, neglected,* or *delinquent.*[14] Among the statutes conferring jurisdiction to supervise juveniles are the Illinois Family Court Act[15] and the Federal Juvenile Court Act.[16]

The Illinois statute subjects all persons under the age of 17 years to the guardianship and control of the court if they are adjudged to be dependent, neglected, or delinquent.[17] Proceedings are instituted upon the written petition of any citizen of the county wherein the juvenile resides and this petition, to be sufficient, must merely allege that the child is dependent, neglected, or delinquent.[18] The juvenile court may retain jurisdiction for an indeterminate length of time but in no case beyond the twenty-first birthday of the juvenile in question.[19] The act, and in this respect it is not typical, provides for a trial by a jury of six persons, if demanded,[20] and further provides that the evidence obtained cannot be used in any subsequent proceedings.[21] As a result of proceedings under the act, a child may be remanded to the custody of its parents (subject to the visitation of a probation officer), placed in a foster home, placed in the custody of a guardian, or sent to one of the institutions operated by the Illinois Youth Commission.[22] The jurisdiction of the Family Court is not exclusive, although the statute would seem to indicate so, since the Illinois Constitution confers primary jurisdiction upon the circuit courts in all criminal cases.[23]

The federal statute gives the juvenile an election between a criminal trial before the district court or proceedings before the juvenile court.[24] If the juvenile elects to be tried before the juvenile court he must make an intelligent waiver of several of his constitutional rights, chiefly the right to a public trial and the right to a trial by jury.[25] The juvenile may be committed for any period not exceeding his minority, but in no case may he be committed for a period in excess of that for which he might have been committed had he chosen to stand trial before the district court.[26] Bail may be set at the discretion of the committing magistrate.[27]

The Illinois and federal statutes are somewhat progressive, guaranteeing the juvenile some safeguards. Most state statutes omit any provisions regarding the observance of either constitutional safeguards or the orthodox requirements of procedural due process.[28] The courts have not been quick to read these safeguards into the statutes.

Statutes establishing juvenile courts have been subjected to vigorous attack as denying due process of law, providing cruel and unusual punishments, denying equal protection of the laws, and as an unwarranted interference with the relationship between parent and child.[29] These attacks have come

[12] State *ex rel.* Stearns County v. Klasen, 123 Minn. 382, 143 N.W. 984 (1913).

[13] *E.g., In re* Sharp, 15 Idaho 120, 127, 96 Pac. 563, 564 (1908). This case involved a habeas corpus application to remove a child from the State Industrial Training School. The court upheld the Juvenile Court Act, deeming it to be benevolent in nature. "Its object is to confer a benefit upon both the child and the community."

[14] *In re* Warren, 40 Wash. 2d 342, 343, 243 P.2d 632, 633 (1952). The court lacked jurisdiction since dependency had not been established. "The mere fact that certain individuals invoke the aid of our courts to litigate the question of who shall have custody and control of a minor, does not, *ipso facto*, vest our courts with jurisdiction to decide the issues thus presented." See also *In re* Crozier, 44 Wash. 2d 901, 904, 272 P.2d 136, 138 (1954). "The juvenile court has no jurisdiction over a minor unless it is proved that a minor is either (a) a delinquent or (b) a dependent child. . . . The concept that all children are wards of the state, and that the state and its agencies have an unhampered right to determine 'what is right for the child' is . . . an idea . . . repugnant to American institutions."

[15] ILL. REV. STAT., ch. 23, §2001–2019 (1957).

[16] 18 U.S.C. §5010–5037 (1948).

[17] ILL. REV. STAT., ch. 23, §2001 (1959 Pocket Part).

[18] ILL. REV. STAT., ch. 23, §2006 (1957).

[19] ILL. REV. STAT., ch. 23, §2016 (1957).

[20] ILL. REV. STAT., ch. 23, §2002 (1957).

[21] ILL. REV. STAT., ch. 23, §2001 (1957).

[22] ILL. REV. STAT., ch. 23, §2009, 2013 (1957).

[23] People v. Lattimore, 362 Ill. 206, 199 N.E. 275 (1936); People *ex rel* Malec v. Lewis, 362 Ill. 229, 199 N.E. 276 (1936).

[24] 18 U.S.C. §5032 (1948).

[25] 18 U.S.C. §5033 (1948).

[26] 18 U.S.C. §5034 (1948).

[27] 18 U.S.C. §5035 (1948).

[28] *E.g.*, IOWA CODE, tit. XI, ch. 231, 232 (1949); IND. ANN. STAT., ch. 10, §813–20 (1956); KANS. GEN. STAT., ch. 38, §405–508 (1949); MISS. CODE ANN. §7185.01–.30 (1942); NEB. REV. STAT., ch. 43, §200–408 (1949); PENN. ANN. STAT., ch. 18, §240–259 (1943).

[29] Wheeler v. Shoemake, 213 Miss. 374, 404, 57 So. 2d 267, 281 (1952). This case was a habeas corpus

to little avail for proceedings under the statutes have been almost invariably upheld. The failure of these attacks on the juvenile court acts is not surprising in view of the failure of similar attacks on statutes providing for the summary commitment of sexual psychopaths.[30]

Though the proceedings in the juvenile court are said not to require the formal procedural requirements of other courts of record, certain general requirements are usually insisted upon such as jurisdiction, findings supported by the evidence, and at least the rudiments of due process.[31] When translating the general into the specific, however, the courts have tended to dispense not only with the requirements of procedural due process but also with specifically enumerated constitutional guarantees. The juvenile is not being tried for a crime; his feet are being placed on the "path of rectitude." The following sections will consider some of the safeguards, usually guaranteed in criminal proceedings, which have been dispensed with in juvenile proceedings.

Warrant for Arrest

Since juvenile proceedings are said to be civil in nature, the juvenile is not arrested in the technical sense of the word. Citation or its equivalent is adjudged to be a satisfactory substitute for a warrant. When the juvenile is cited in a petition as delinquent, the court immediately takes custody of the juvenile, pending an investigation by court officials. The law of arrest is thus inapplicable to juvenile proceedings in most jurisdictions.[32]

Indictment or Information

Although due process does not require any particular method for the institution of criminal proceedings, it has always been thought that if either indictment or information were the appropriate method, then equal protection of the laws required that all persons be proceeded against in the same or a similar manner.[33] Most courts have refused to require the same or a similar manner of citation in juvenile proceedings. Generally, a petition alleging that a child is dependent, neglected, or delinquent is sufficient to initiate proceedings against a juvenile.[34]

Notice to the Person

The courts have frequently held that no formal notice to the child or to the persons having custody

proceeding to obtain the release of a juvenile on the grounds that he was convicted by a criminal court while under eighteen years of age in direct contravention of the juvenile court act. The respondent put the constitutionality of the statute in issue. The court said: "The view has generally been taken that [such statutes] are not unconstitutional by reason of dispensing with certain procedural steps and safeguards which are usually regarded as essential in criminal prosecutions, such as trial by jury, arraignment or plea, or notice to the person, or a warrant of arrest, or because of a provision requiring the child to be a witness against himself. Such statutes have also been held not to be unconstitutional . . . as depriving children of the equal protection of the laws, or of due process of law or as providing for the imposition of cruel or unusual punishment or as unlawfully interfering with the relationship of parent and child." *See also; Ex parte* Nacarrat, 328 Mo. 722, 41 S.W.2d 176 (1931); *In re* Santillanes, 47 N.M. 140, 138 P.2d 503 (1943). Here, the juvenile court act was upheld over the constitutional objection that it failed to afford protection against double jeopardy and self-incrimination, that it failed to provide for notice to either parent or child, and that no provision was made for appellate review. The court further held that the fourteenth amendment did not guarantee trial by jury in juvenile proceedings. Even though adults would be entitled to jury trial when accused of the same offense, the equal protection clause of the fourteenth amendment was not thought to require that children be proceeded against in the same manner.

[30] Compare the treatment of juvenile offenders with the treatment of "sexually dangerous persons" under ILL. REV. STAT., ch. 38, §820-29 (1957) wherein the proceedings are declared to be civil in nature and where the sentence is for an indeterminate time, that is until recovery, but where the right to counsel and trial by jury are preserved.

[31] *In re* Holmes, 175 Pa. Super. 137, 146, 103 A.2d 454, 459 (1954). The court held that proceedings before the Juvenile Court are actions "in a court of record, the court must have jurisdiction, its basic findings must be supported by evidence and the rudiments of procedural due process and fair play must be observed. The record must be legally and factually adequate to sustain the findings of fact and order of commitment. . . . The action of the juvenile court is always subject to appellate review and correction for errors of law or abuse of discretion." Despite the statement quoted above, the Superior Court and the Supreme Court of Pennsylvania allowed Holmes' probation to be revoked on *hearsay evidence, without notice to him or his parents, without a jury, without warning him concerning his privilege against self-incrimination and without counsel.*

[32] State *ex rel.* Palagi v. Freeman, 81 Mont. 132, 262 Pac. 168 (1927); Mill v. Brown, 31 Utah 473, 88 Pac. 609 (1907); Lindsay v. Lindsay, 257 Ill. 328, 100 N.E. 892 (1913); Wheeler v. Shoemake, *supra* note 29. *But see:* Freestone v. State *ex rel* Advance-Rumely Co., 98 Ind. App. 523, 176 N.E. 877 (1931).

[33] State *ex rel* Cave v. Tincher, 258 Mo. 1, 21, 166 S.W. 1028, 1033 (1914). The Supreme Court of Missouri held that the juvenile court statute violative the state constitution on the ground that "[A]n indictment or information being necessary to a prosecution for a violation of the laws of the state, it must be such as is meant by the common law, viz., in the one instance be found and presented by a grand jury, and in the other be instituted by a public officer authorized to prosecute crimes. . . . Failing to require these necessary prerequisites in the exercise of jurisdiction over offenders, the act cannot be sustained."

[34] ILL. REV. STAT., ch. 23, §2016 (1957). See also note 28, *supra.*

of the child is necessary.[35] Where the authorizing statute requires notice to both the juvenile and to the parents, voluntary appearance, though notice had not been given, may constitute a waiver of notice. Such a waiver must have been made with knowledge that notice was required by the statute.[36]

Arraignment and Plea

Arraignment has been considered an unnecessary step in juvenile proceedings. The juvenile is not being charged with a crime, according to the courts, and thus arraignment serves no real purpose.[37] The entering of a plea of guilty or not guilty has not been thought to be required for similar reasons. One court has gone so far as to say that not only is a plea not required, but also that a plea is absolutely void, for the statute in question required the magistrate to act solely upon the evidence and not upon the admissions of the juvenile.[38]

Bail

Even though a youth is alleged to have committed a felonious act which is ordinarily bailable, bail is not made available in most juvenile cases.[39] In one jurisdiction, however, while an appeal was pending, bail was required and the amount of bail was required to be set at an amount which was not excessive.[40] The federal statute authorizes the district judge to set bail at his discretion.[41]

Privilege Against Self-Incrimination

Generally the courts do not agree upon the applicability of the privilege against self-incrimination in juvenile proceedings.[42] Despite the fact that the privilege applies in civil as well as criminal cases, the majority of courts refuse to apply it in juvenile proceedings.[43] Some courts hold the privilege applicable unless the statute grants immunity from subsequent proceedings involving the same offenses.[44] Confessions made by juveniles are admissible in most jurisdictions,[45] but they cannot be the sole basis for the findings of the court in the majority of jurisdictions.[46]

Right to Counsel

Many courts insist that a juvenile is entitled to be represented by counsel, but usually the court is under no duty to advise the youth of his right to counsel nor is it required to provide counsel if he is unable to procure one.[47] Frequently the appointment of a *guardian ad litem* is said to be sufficient representation.[48] In *Shioutakon v. District of Columbia*,[49] the court insisted that the juvenile involved had the right to be informed that he was entitled to engage counsel or to have counsel named in his behalf, but a later district court decision does not follow this case.[50]

[35] See note 29 *supra*. Freestone v. State, 98 Ind. App. 523, 176 N.E. 877 (1931). Function of notice is served by the appointment of a guardian *ad litem* in this jurisdiction. See also Prescott v. State, 19 Ohio St. 184 (1869).

[36] 199 Misc. 1075, 107 N.Y.S.2d 896, *aff'd.*, 280 App. Div. 268, 113 N.Y.S.2d 475 (1952).

[37] Wheeler v. Shoemake, *supra* note 29; Mill v. Brown, *supra* note 32.

[38] Harris v. Souder, 233 Ind. 287, 119 N.E.2d 8 (1954).

[39] Espinosa v. Price, 144 Tex. 121, 188 S.W.2d 576 (1945). The petitioners were adjudged to be delinquent children. They filed a writ of habeas corpus to secure bail pending an appeal. The court held that proceedings under the delinquency act, VERN. ANN. CIV. STAT., art. 2338 (1941), were civil and not criminal and that under the civil rules, bail is available at the court's discretion and may be witheld.

[40] *Ex parte* Osborne, 127 Tex. Crim. 136, 75 S.W.2d 265 (1934). The court treated the juvenile proceeding as essentially a criminal case and held that the juvenile was entitled to bail, and that bail should not be excessive as guaranteed by the state constitution.

[41] 18 U.S.C. §5035 (1948).

[42] Annot., 43 A.L.R.2d 1128, 1133–35 (1955).

[43] Freestone v. State, 98 Ind. App. 523, 176 N.E. 877 (1931), Lindsay v. Lindsay, 257 Ill. 328, 100 N.E. 892 (1913) (a dependency proceeding); Mill v. Brown, *supra* note 32; State *ex rel* Palagi v. Freeman, *supra* note 32.

[44] *In re* Dargo, 81 Cal. App. 2d 205, 183 P.2d 282 (1947). Statute permitted admission of confessions made without any warning regarding self-incrimination. See also People v. Lewis, 260 N.Y. 171, 183 N.E. 353 (1932), *cert. denied* 289 U.S. 709 (1933).

[45] *In re* Holmes, 329 Pa. 599, 109 A.2d 523 (1954); *In re* Mont, 175 Pa. Super. 150, 103 A.2d 460 (1954); State v. Cronin, 220 La. 233, 56 So.2d 242 (1951); *re* Santillanes, *supra* note 29.

[46] People v. Fitzgerald, 244 N.Y. 307, 155 N.E. 584 (1927); People *ex rel* Deordio v. Palmer, 230 App. Div. 397, 244 N.Y.S. 727 (1930) (the charge was established upon a plea of guilty rather than other competent evidence and therefore was set aside).

[47] *Ex parte* State *ex rel* Echols, 245 Ala. 353, 17 So.2d 449 (1944). Court held that a juvenile was not entitled to counsel at the state's expense. See also *In re* Schaeffer, 126 A.2d 870 (D.C. Mun. Ct. App. 1956). While a child has the right to representation by counsel, failure to advise him of this right is not a denial of due process.

[48] Summerour v. Fortson, 174 Ga. 862, 164 S.E. 809 (1932).

[49] 236 F.2d 666, 670 (D.C. Cir. 1956). "Since an intelligent exercise of the juvenile's rights requires legal skills not possessed by the ordinary child under 18 . . . a juvenile is entitled to be represented by counsel. . . . Our concern for the fair administration of justice impels us to hold that in this and in similar cases in the future, the juvenile must be advised that he has a right to engage counsel or to have counsel named on his behalf. And, where that right exists, the court must be assured that any waiver of it is intelligent and competent."

[50] *In re* Schaeffer, *supra* note 47.

Trial by Jury

In the absence of a specific provision for jury trial, most courts hold that a trial by jury is unnecessary. The justification for this dispensation may lie in the origin of the juvenile courts; trial by jury was unavailable in the courts of chancery. The New Mexico court, in *In re Santillanes*,[51] refers to the equitable nature of the proceedings and insists that although an adult charged with the identical offense is entitled to trial by jury, equal protection of the law does not require that a juvenile be accorded the same protection. Similar results have been reached in most jurisdictions where the constitutionality of statutes establishing juvenile courts has been challenged for failure to provide equal protection of the law by denying trial by jury.[52] In federal juvenile proceedings the dispensation with trial by jury is justified on a waiver theory. The federal statute[53] specifically provides an option to the juvenile to choose between a criminal or a juvenile proceeding and by exercising this option he is deemed to have waived his right to a trial by jury.[54]

Definite Accusation

The federal constitutional guarantee, and its counterpart in most state constitutions, that every accused shall know the character of the accusations against him seems to have no applicability in the juvenile court. Typical statutes[55] provide that any citizen of the county in which the juvenile resides can petition the court to take jurisdiction over the juvenile; to be sufficient the petition need state little more than the bare allegation that the child is dependent, neglected, or delinquent. The Wisconsin court in *In re Bentley*[56] held valid a proceeding in which the petition alleged that the juvenile in question habitually deported himself so as to injure and endanger the morals of himself and others and was delinquent. The court held that the complaint was sufficient under the statute and did not consider the issue of vagueness and indefiniteness although it was raised. The federal courts seem to meet this objection inasmuch as the juvenile is charged with a specific offense and then is given his option to be proceeded against as a juvenile or in the district court in a criminal proceeding.[57]

Public Trial and Confrontation

Many statutes provide that the proceedings in the juvenile court must take place in the judge's chambers.[58] This is done to avoid notoriety. While privacy may be a laudable objective, frequently not only the public but also the juvenile involved, and his parents, are not present when evidence is taken. The Pennsylvania court, in *In re Holmes*,[59] upheld the revocation of a juvenile's probation and his commitment to an industrial home in a proceeding where testimony was taken out of his presence. The court intimated that the dispensation with a public trial also permitted the reception of evidence in an *ex parte* proceeding.[60]

Same Penalty for Same Offense

A careful reading of the Illinois statute[61] indicates that any minor over the age of twelve can be committed to an institution operated by the Youth Commission until he reaches the age of twenty-one for an act which, if committed by an adult, would

[51] 47 N.M. 140, 138 P.2d 503 (1943).

[52] *In re* O'Beirne, 194 Or. 389, 241 P.2d 874, 875 (1952). The court held that a jury trial was unnecessary since "a juvenile court enjoys . . . a latitude in procedure not known or permitted in courts trying criminal cases." In Farnham v. Pierce, 141 Mass. 203, 6 N.E. 830 (1886), a jury trial was dispensed with on the theory that the proceeding is not a final adjudication but merely an investigation. State *ex rel* Olson v. Brown, 50 Minn. 353, 52 N.W. 935 (1892), was a habeas corpus proceeding to obtain the release of a minor child from a state reform school on the grounds that his detention resulted from a proceeding in which he was denied his right to a trial by jury in violation of the state constitution. The court held the proceedings to be civil in nature, aiming towards reformation and not punishment and that the guarantees applicable to criminal proceedings were unnecessary in delinquency proceedings. See also: Milwaukee Industrial School v. Milwaukee County, 40 Wis. 328 (1876); People *ex rel* Bradley v. Illinois State Reformatory, 148 Ill. 413, 36 N.E. 76 (1894); People *ex rel* Martin v. Mallary, 195 Ill. 582, 63 N.E. 508 (1902).

[53] 18 U.S.C. §5033 (1948).

[54] Pamplin v. United States, 221 F.2d 557, 558 (10th Cir. 1955).

[55] ILL. REV. STAT., ch. 23, §2006 (1957); PENN. STAT. ANN., ch. 11, §247 (1939).

[56] 246 Wis. 69, 16 N.W.2d 390 (1944). See also; *In re* Duncan, 62 Ohio L. Abs. 173, 107 N.E.2d 256 (1951), where the complaint was held to be sufficient although it merely alleged that the child involved was dependent.

[57] See notes 53 and 54 *supra*.

[58] Dendy v. Wilson, 142 Tex. 460, 179 S.W.2d 269 (1944). The exclusion of the general public was held to be proper since it saved the juvenile from embarassment and permitted the absence of unfavorable publicity.

[59] 379 Pa. 599, 109 A.2d 523 (1954).

[60] *Ibid.; but see* the dissenting opinion of Musmanno, J. at p. 535: "The 14th Amendment to the Constitution . . . guarantees . . . as due process of law . . . the right to face one's accuser, to summon witnesses in one's defense."

[61] ILL. REV. STAT., ch. 23, §2001–20 (1957).

not even be punishable, or if so, would only be punishable by a fine or a short period of incarceration. Courts acting under similar statutes have declared that an indeterminate term of supervision is not a denial of due process, or of equal protection of the law nor a cruel or unusual punishment.[62] The usual justification for the continuance of the jurisdiction of the juvenile court for an indefinite term is that reformation cannot be attained in a definite period of time. Since the purpose of the juvenile court is to reform youthful offenders, the court must be able to continue its supervision until the juvenile is no longer in need of such guidance or until he is no longer a minor.[63]

Sworn Testimony

Some courts have specifically recognized the necessity for sworn testimony in juvenile proceedings.[64] While an oath has generally been thought to be an essential pre-requisite to the reception of testimony, some courts, for less than persuasive reasons, have upheld the adjudication of a juvenile as a delinquent solely on the basis of unsworn testimony. In *State v. Scholl*,[65] the probation officer who had investigated the petition requesting that a juvenile be adjudged delinquent testified, though unsworn, in an *ex parte* hearing held in the judge's chambers. The substance of the officer's testimony was that the boy involved had confessed to being in railroad yards frequently and that other boys had verified this information. This information was held to be sufficient to sustain the commission of the juvenile as a delinquent.[66]

Burden of Proof and Rules of Evidence

Juvenile courts have generally applied the civil rules regarding the admissibility of evidence and the burden of proof. Thus, in a juvenile proceeding, the accusation need not be established beyond a reasonable doubt, but merely by the preponderance of the evidence.[67] Some jurisdictions have recognized the criminal nature of the proceedings, particularly where a serious offense has been involved, and have applied the criminal standards of proof, requiring that the allegations be established beyond a reasonable doubt.[68] Hearsay has been admitted as competent evidence in many jurisdictions, at least for whatever probative value it might have.[69] Some jurisdictions allow hearsay merely for impeachment purposes but not as proof of the alleged delinquency.[70] Testimony taken outside the

[62] *Ex parte* Naccarat, 328 Mo. 722, 41 S.W.2d 176 (1931); *Ex parte* Birchfield, 90 Okla. Crim. 197, 212 P.2d 145, 148 (1949). A married girl, aged thirteen, was committed to the reformatory for an indefinite term not to exceed her minority. The sentence was in excess of that which an adult could have received for the same offense, but the court stated: "To commit a juvenile for a definite period of time would require the presumption that reformation could be attained in a definite period of time. Such a presumption would certainly be unwarranted."

[63] See generally note 29 *supra*. See also: *In re* Gomez, 113 Vt. 224, 32 A.2d 138 (1943); *In re* Hook, 95 Vt. 497, 115 Atl. 730 (1922).

[64] *In re* Mantell, 157 Neb. 900, 62 N.W.2d 308 (1954). The defendant was charged with delinquency and proceeded against under the juvenile court act. Unsworn testimony was used against him. The committment was reversed on the grounds that the juvenile had been denied due process of law. See also Mill v. Brown, *supra* note 32; Annot., 43 A.L.R.2d 1128, 1145 (1955).

[65] 167 Wis. 504, 167 N.W. 830 (1918).

[66] *Id.* at 832. "In such investigations we know of no rule which prevents the use of investigation and 'unsworn testimony in ascertaining essential facts. . . . Good results are far more likely to be obtained in this way by the use of *informal* methods. . . . It may be advisable . . . that sworn testimony be taken and the essential facts thus proven before the final order is made . . . [but] [i]n the present case the boys were *simply put on probation*, and we regard the proceedings taken as entirely sufficient, although no witness was sworn. The investigations of the probation officer and the facts brought out by the *kindly questioning of the judge* upon the hearing substantiate the fact of delinquency fully as well as sworn testimony." (Emphasis added.) See also State *ex rel* Christensen v. Christensen, 119 Utah 361, 227 P.2d 760 (1951).

[67] Bryant v. Brown, 151 Miss. 398, 118 So. 184 (1928). People v. Lewis, 260 N.Y. 171, 183 N.E. 353 (1932), *cert. denied* 289 U.S. 709 (1933).

[68] *In re* Madik, 233 App. Div. 12, 251 N.Y.S. 765 (1931) (requires proof beyond a reasonable doubt to substantiate the petition). Jones v. Commonwealth, 185 Va. 335, 38 S.E.2d 444, 447 (1946) ("Guilt should be proven by evidence which leaves no reasonable doubt. Inferences must give way when in conflict with facts established by positive proof.").

[69] *In re* Holmes, *supra* note 45, at 626: "From the very nature of the hearings in the Juvenile Court it cannot be required that strict rules of evidence should be applicable as they properly would be in the trial of cases in the criminal court. Although, of course, a finding of delinquency must be based upon sufficient competent evidence . . . hearsay evidence, if it is admitted without objection and is relevant and material to the issue, is to be given the natural and probative effect and may be received as direct evidence." But see the dissenting opinion of Musmanno, *J.*, at 632: "In justification of this incredible procedure, the Majority . . . says that it is proper to receive hearsay when it is admitted without objection. What did Joseph Holmes know about objections? He is a minor. He had no lawyer to advise him. No one informed him of his rights. He was not told he could object. A child in a courtroom amid a throng of police officers, probation officers, court attendants and other officials, with a judge officiating from a podium, is not apt to summon the brashness, even if he possessed the knowledge, to lift his voice and cry that what a police officer testified to was hearsay, even if he knew what hearsay meant."

[70] *In re* Mantell, *supra* note 64; *In re* Green, 123 Ind. App. 81, 108 N.E.2d 647, 649 (1952). A juvenile

presence of the juvenile, thus denying him an opportunity to cross-examine has sometimes been held to be inadmissible,[71] but there is a case to the contrary.[72]

Double Jeopardy

Frequently, the jurisdiction of the juvenile court is not exclusive and the case, if it involves a serious offense, can be removed to the criminal court.[73] After a juvenile court has adjudged a minor to be delinquent, it could be argued that jeopardy has attached and that the minor could not again be tried for the offenses involved. However, in the absence of a clear statutory prescription to the contrary, this is not the law. The Illinois statute establishing the Family Court prohibits the use of evidence obtained in juvenile proceedings in any subsequent proceeding in any other court, but this does not answer the defense of double jeopardy which could be raised.[74]

Right To Appeal

In most instances where appellate jurisdiction has been invoked to consider the judgment of a juvenile court, it has been invoked collaterally by way of habeas corpus. Most statutes do not provide for direct appeal. The courts are about equally divided as to whether a right to appeal exists when the statute is silent. Some courts hold that appeal in a juvenile case is not a constitutional right and thus must be conferred by statute.[75] Other courts hold that unless the right to appeal is specifically withheld, appeal may be taken at least regarding matters of law.[76]

In view of what history and the case law have demonstrated, a discussion of the two fundamental misconceptions noted earlier now appears to be in order.

1. A confusion between an *adjudication* of delinquency and the *treatment* subsequent to such an adjudication. Delinquency proceedings are essentially criminal in nature and involve two steps:
   a. an adjudication (essentially a trial) and
   b. treatment or rehabilitation (the substitute for sentencing and imprisonment accorded offenders under the criminal law).

Only in this second step (i.e. treatment) should criminal law procedure properly be deviated from. Rehabilitation may be substituted for punishment, but a *star chamber* cannot be substituted for a trial. The law and lawyers have abdicated their responsibility in this area. The legislatures have drafted loosely worded statutes which failed to provide any safeguards for the juvenile accused of delinquency. The courts have not felt compelled to provide these safeguards when called upon to interpret the statutes, insisting that they deny every safeguard which they do not specifically enumerate.

In its eagerness to modify the application of criminal sanctions to youthful offenders the law has been beguiled by the disciplines of sociology, psychiatry, and psychology.[77] These disciplines are invaluable in the *rehabilitation* of youthful offenders, but they have no place in the essentially legal determination of whether the juvenile has committed the act or acts cited to sustain the delinquency petition.[78] It has been insisted that a child should not be subjected to a trial and its attendant formality because irremediable traumatic shock, rendering treatment more difficult, would result. However, the equally traumatic experience which befalls the juvenile who, though he has not committed the acts constituting the alleged delin-

was adjudged to be a delinquent on the basis of an *ex parte* report of a court officer, which consisted almost entirely of hearsay and was made to the judge in his chambers. The appellate court reversed the decision of the juvenile court stating: "The petition reveals a *star chamber* proceeding whereby a boy was torn from the custody of his parents and deprived of his liberty without a semblance of due process and by reason of a judgement that was not merely erroneous but absolutely void." (Emphasis added.) *In re* Hill, 78 Cal. App. 23, 247 Pac. 591 (1926). See generally Annot. 43 A.L.R.2d 1128, 1141 (1955).

[71] *In re* Mantell, *supra* note 64; State *ex rel* Palagi v. Freeman, 81 Mont. 132, 262 Pac. 168 (1927).

[72] *In re* Holmes, *supra* note 59.

[73] People *ex rel* Malec v. Lewis, 362 Ill. 229, 199 N.E. 276 (1935). The criminal court exercised its power to remove the case from the juvenile court after the minor involved had been adjudged to be a delinquent.

[74] ILL. REV. STAT., ch. 23, §§2001, 2914 (1957).

[75] Wissenberg v. Bradley, 209 Iowa 813, 229 N.W. 205 (1929). The court held that there was no appeal from the decision of the juvenile court since, "At common law the right of appeal was unknown. It is purely a creature of statute." See also State v. McDonald, 206 La. 732, 20 So.2d 6 (1944).

[76] Review may also be had through an extraordinary writ. Mill v. Brown, 31 Utah. 473, 88 Pac. 609 (1907); or by *certiorari*, State *ex rel* Jones v. West, 139 Tenn. 522, 201 S.W. 743 (1918).

[77] See criticism of legal proceedings and insistence on "informality" and treatment of the "total personality" in: BEARD, JUVENILE PROBATION (1934); YOUNG, SOCIAL TREATMENT IN PROBATION AND DELINQUENCY (1937); LOU, JUVENILE COURTS IN THE UNITED STATES (1927).

[78] See GLUECK, THE PROBLEM OF DELINQUENCY 322–33 (1959) for a criticism of the indiscriminate coupling of adjudication and treatment.

quency, is rehabilitated against his will has been, for the most part, ignored. Whatever traumatic shock might result from a completely legal proceeding would be more than compensated for by the restoration of constitutional safeguards to juvenile proceedings. Once the juvenile has been adjudged to be a delinquent, then and only then should the law refer to those best equipped to help him.

2. A confusion between an adjudication of *delinquency* (essentially a criminal determination) and an adjudication of *dependency* or *neglect* (essentially a civil determination).

The courts can find no scapegoat for the indiscriminate coupling of delinquency, neglect, and dependency. The legislatures have carefully delineated what constitutes each of these categories but have failed to provide separate procedures to determine the existence of any one of them. The cases heretofore examined cite *dependency* cases as authority for dispensing with certain safeguards in *delinquency* cases. The confusion which results ignores the essential nature of the various proceedings.

Delinquency proceedings are essentially criminal, and the procedure used should be patterned after the criminal law, with all of its safeguards, requiring that the allegations should be proved beyond a reasonable doubt. Whether the proceeding be called a hearing, an investigation, or any other euphemism, the child is being *tried* for his misdeeds. Benevolent sentencing cannot compensate for an autocratic trial or for no trial at all.

Dependency or neglect cases, on the other hand, involve a true exercise of the power of *parens patriae* and should be patterned after the civil law requiring that the allegations be proved by a preponderance of the evidence. In these cases, the state is taking the place of the parent who is unable or unwilling to care for the child. No stigma attaches to the child; it is not his commissions which are being adjudicated, but rather the omissions of his parents. Here a civil proceeding is appropriate; the child is not accused of anything. He is the wronged, not the wrongdoer.

Recent Cases Providing Safeguards for Juveniles

Since the establishment of the first juvenile court in 1899, the courts have been fairly unanimous in describing the proceedings as civil in nature. Where the enabling statute has not provided otherwise, the courts have dispensed with almost every procedural safeguard known to criminal trials. Logically the designation of delinquency proceedings as civil in nature is unsound since the proceedings result in an interference with the personal liberty of the juvenile. Recent cases have discarded the civil versus criminal test and have established two new tests to determine whether safeguards should be accorded the juvenile:

1. What is necessary for a fair adjudication?
2. Is the essential nature of the proceedings such as to result in a deprivation of personal liberty?

Fair Adjudication Test

In *People v. Dotson*[79] a minor was convicted of murder, burglary, and robbery in the Superior Court after the juvenile court had relinquished jurisdiction. On appeal Dotson claimed that since he was not advised of his right to have counsel and since no counsel was provided he had been deprived of his constitutional rights. The dissent agreed with Dotson, reasoning that if he had been provided counsel, the juvenile court might have been persuaded to retain jurisdiction. In that instance, the defendant would never have been tried for the offenses in a criminal proceeding.[80] The majority of the court, however, held that he was not entitled to counsel since *no undue advantage* was taken of him in the juvenile proceedings. Nevertheless the court insisted that minors are entitled to all the safeguards which are necessary to insure that they are accorded *fair treatment*.[81]

Essential Nature of the Proceedings Test

In re Poff[82] was a habeas corpus proceeding brought to test the validity of a sentence imposed by the juvenile court. A minor, aged seventeen, was accused of using automobiles without the permission of the owners and unlawfully taking personal property. The issue in this case was whether due process required that a child have the effective assistance of counsel when he has committed an offense which if committed by an adult would require such assistance. The court decided that such assistance was a necessary requisite of due process and remanded the case. The court stated: "This

[79] 46 Cal.2d 891, 299 P.2d 875 (1956).

[80] See also State v. Barkus, 95 N.W.2d 670 (Neb. 1959).

[81] See note 79 *supra* at 877. "The fact that a minor is not represented by counsel need not be a denial of due process. . . . It is only when . . . undue advantage is taken of him or he is otherwise accorded unfair treatment resulting in a deprivation of his rights that it can be said he has been denied due process of law."

[82] 135 F. Supp. 224 (D.D.C. 1954).

Court stands steadfast in the belief that the Federal Constitution . . . cannot be nullified by a mere nomenclature. It seems to me to follow as a matter of law that a boy of seventeen cannot competently waive his right to counsel in a criminal case."[83]

United States v. Dickerson,[84] decided recently by the United States District Court for the District of Columbia, was a proceeding to dismiss a criminal court indictment on the grounds that it violated the defendant's constitutional right not to be placed twice in jeopardy for the same offense. Dickerson had previously been brought before the juvenile court and had acknowledged his guilt. The court had adjudged him to be delinquent and had continued the case for social study pending disposition. The district court held that jeopardy had attached upon the adjudication of delinquency and that the constitutional guarantee against double jeopardy applies to proceedings in the juvenile court. The case is significant more for its reasoning than for its result. Courts have previously held one safeguard or another applicable in juvenile proceedings, but this court has cast aside the fiction that delinquency proceedings are nothing more than a specie of the civil action. The court stated: "Ineluctable logic leads to the conclusion that the constitutional protection against double jeopardy, as is the case with the right of counsel and the privilege against self-incrimination, is applicable to all proceedings, irrespective of whether they are denominated criminal or civil, if the outcome may be *deprivation of liberty of the person.* Necessarily, therefore, this is true of proceedings in the Juvenile Court. Precious constitutional rights cannot be diminished or whittled away by the device of changing names of tribunals or modifying the nomenclature of legal proceedings. *The test must be the nature and the essence of the proceeding rather than its title. If the result may be a loss of personal liberty, the constitutional safeguards apply.*" (Emphasis added.)[85]

The federal statute[86] authorizes the juvenile court to waive jurisdiction, and this right is in no way abridged by the *Dickerson* case. Jeopardy does not attach after an investigation or after a preliminary hearing but only when in essence the juvenile has pleaded guilty or has been adjudged to be a delinquent. Then it is too late for the court to waive its jurisdiction.

Not unexpectedly, the Court of Appeals for the District of Columbia reversed the decision in the *Dickerson* case, relying on the often repeated assertion that the proceedings are civil in nature.[87] The case is still significant, however, since it marks one of the rare instances where a court has recognized that personal liberty is at stake in juvenile proceedings.

[83] *Id.* at 226, 228.
[84] 168 F. Supp. 899 (D.D.C. 1958).
[85] *Id.* at 901–2.
[86] 18 U.S.C. §5032 (1948).

Proposals for Future Action

Since the responsibility for the deplorable state of the nation's juvenile courts must rest largely on the shoulders of the lawyers who have ignored their rightful role in this area, the organized bar should take the following steps:

1. Bring test cases to the state supreme courts in which the constitutional issues are clearly defined. The spectre of a possible federal vindication of the safeguards denied is a possible argument. If the states refuse to act in this area, the United States Supreme Court, reluctantly perhaps, may intervene by way of *certiorari* or the federal district court may vindicate the constitutional right or due process objection collaterally by way of habeas corpus.

2. Seek the introduction in state legislatures of bills repealing the existing juvenile court acts and replacing them with statutes incorporating as a minimum the following:

a. Separate definitions of delinquency, dependency, and neglect which are clear and unequivocal in their terms.
b. Separate judicial procedures for delinquency proceedings on the one hand and dependency and neglect proceedings on the other,
   i. denominating delinquency proceedings as criminal in nature and specifically providing that all the guarantees applicable to criminal trials are applicable to these proceedings,
   ii. denominating dependency and neglect proceedings as civil in nature and specifically providing that the guarantees applicable in civil proceedings shall be applicable in these proceedings.

[87] United States v. Dickerson, 28 U.S. L. WEEK 2138, (D.C. Cir. Sept. 30, 1959). "The district court relied on some early state cases which held that, once a plea of guilty is accepted by a court of competent jurisdiction, jeopardy immediately attached. But those cases throw little light on the issue before us. They are traditionally criminal proceedings, which are essentially accusatory adversary and punitive. Consequently, they involve considerations which are not relevant to the non-criminal *parens patriae* proceedings of the Juvenile Court." The United States Supreme Court may soon have an opportunity to decide this vexing problem.

c. A clear delineation between adjudication and treatment. The proceedings should be legal in nature and sociologists, psychiatrists, psychologists, probation officers and the like should be called upon to intervene only after an adjudication has been made. Testimony of experts may be taken in accordance with the standards applicable in other proceedings.

d. A clear statement of the age group over which the juvenile court shall have jurisdiction and a provision for the continuing jurisdiction of the juvenile court until the juvenile reaches his majority. A definite term of commitment should be established in delinquency proceedings with a provision for renewal by the court if the juvenile needs further treatment. Provision should also be made to enable parents, guardians, or the court on its own motion to remove the juvenile from the institution if he is detained after he has been rehabilitated. A clear statement of the various dispositions which may be made of the juvenile in both types of proceedings is also needed.

e. Benevolent provisions:
   i. that an adjudication of delinquency shall not operate as a civil disability,
   ii. that evidence obtained in delinquency proceedings shall not be used in any subsequent proceedings,
   iii. that separate facilities for the custody and transportation of youthful offenders be provided,
   iv. that in no case shall a juvenile, in a delinquency proceeding be placed under supervision for a period in excess of that for which he could have been imprisoned had he been tried as an adult.

f. Features for the protection of society against incorrigible offenders:
   i. imposition of criminal sentences on juvenile offenders, at least where the offense is punishable by criminal sanctions,
   ii. immediate suspension of the sentence and delivery of the juvenile to the custody of those agencies best equipped to rehabilitate him,
   iii. destruction of all records and vacations of the sentence when the juvenile has reached his majority and has been rehabilitated,
   iv. enforcement of the remainder of the sentence when the juvenile has reached his majority and has not been rehabilitated.

Great concern has been expressed in recent years over the rising tide of juvenile delinquency. In attempting to deal with larger numbers of youthful offenders, juvenile proceedings will tend to become even more summary than at present. Panaceas for the solution of the delinquency problem continue to appear and these proposals show less and less awareness of the "essential nature of the proceedings." The National Probation and Parole Association has revised its Standard Family Court Act[88] in an attempt to answer certain objections which its previous efforts along this line have provoked. This proposal not only merges delinquency, dependency, and neglect cases into one common procedure but completely abolishes the concept of delinquency. Certain desirable features must be noted:

a. The court must provide counsel for those who are unable to procure legal assistance.[89]

b. The petition invoking jurisdiction must state the facts upon which the juvenile is brought before the court.[90]

c. Compulsory process is available to the juvenile.[91]

d. Appeal is provided.[92]

However, bail,[93] public trial[94], and trial by jury[95] are specifically withheld. "The hearings shall be conducted in an informal manner" and as the comment on this section reveals, the customary rules of evidence do not apply since:

> "the hearing should have the character of a conference, not of a trial. Formal procedure is incompatible with the informal conference atmosphere required by the court to gain the confidence of child and parents, to elicit the pertinent facts of events, and to become familiar with the personalities of the parties, their emotional states, and the causes of the difficulty."[96]

This concern with the "total personality" and not with the acts cited to sustain the delinquency petition is the keynote of this proposal and others of its ilk. If liberty is to be denied on the mere observation of the demeanor of the child, then informality is merely a euphemism for the *star chamber*.

[88] 5 *National Probation and Parole Association Journal* 100–160 (1959).
[89] STANDARD FAMILY COURT ACT §19 (1959).
[90] *Id.* §12.
[91] *Id.* §14.
[92] *Id.* §28.
[93] *Id.* §17(6).
[94] *Id.* §19.
[95] *Ibid.*
[96] 5 *National Probation and Parole Association Journal* 138 (1959).